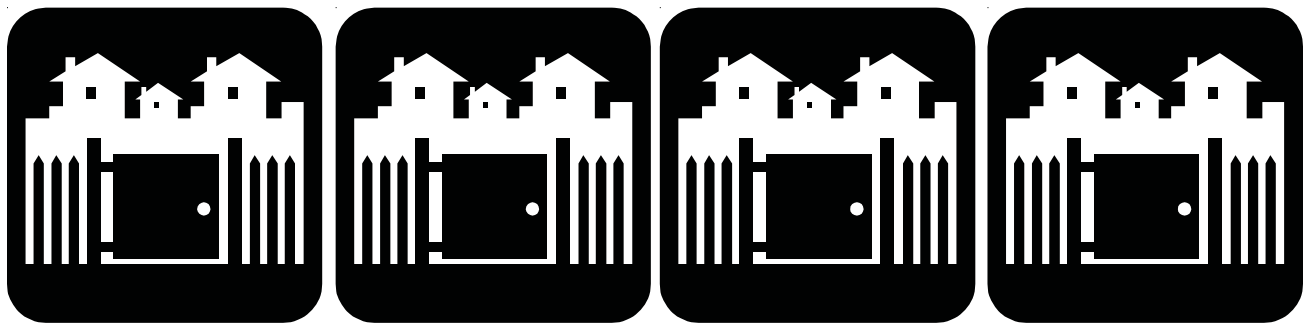


Getting to YIMBY: Lessons in *YES* In My Back Yard



The NIMBY Report No. 1, 2003

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From “NIMBY” to “YIMBY”: How to Get (and Keep) the Government on Your Side in Zoning and Land Use Matters

Michael Allen

These days, if you are an affordable housing developer or advocate, it’s easy to feel cynical and embattled. After all, the Supreme Court has just decided the *Buckeye* case, holding that it is permissible for a local government to condition site plan approval on a citizen’s referendum. Monthly issues of *The NIMBY Report*¹ and news postings on the Building Better Communities Network website² remind you of the obstacles facing our movement in communities from coast to coast.

Often, those obstacles are experienced as zoning and land use restrictions imposed by agencies of state and local government. But we must vigorously resist the temptation to think of state and local government as the enemy of affordable housing. Elected and appointed officials are charged with maintaining livability in communities facing numerous physical and fiscal challenges. They know about their obligations to comply with the Fair Housing Act, the Americans with Disabilities Act and a slew of other complicated federal requirements, but often feel caught “between a rock and a hard place,” as homeowners, business leaders and other powerful interests push them to resist change in established neighborhoods and to preserve green space throughout metropolitan areas.

Instead, as this article suggests, we need to nurture positive relationships with elected and appointed officials and seek out new ways in which government can be transformed into a positive force for development of affordable housing and community-based services for all residents, regardless of race, age, income or disability. Getting state and local government on the side of affordable housing development can occur through broad policy development in order to create a more hospitable atmosphere, or through careful preparation and advocacy in specific cases. This article focuses on the former, and provides a handful of examples of how state and local governments are already trying to do the right thing.

We offer these examples, not because they are ideal,³ but because they have been tested in the real world and have produced some good results. For those who are

feeling cynical about government and citizen involvement, these models may contain some universal seeds of success that can be transplanted in other locations. There is contact information at the end of the article for those who might feel inspired to replicate these approaches.

Perhaps the most familiar among state and local initiatives is “inclusionary zoning.” A number of states and localities have adopted such approaches, most notably New Jersey, Massachusetts, California, and Montgomery County, Maryland. Richard Tustian, the former Planning Director of Montgomery County, says that the term can have two meanings:

1. Any zoning action that works to increase housing quantity or density (with the inference that a market by-product of this action will be a reduction in the price of the units—the key goal of all concerned for social justice) and
2. Any zoning action that requires a reduction in the market price of housing units.⁴

While the effort to enact “fair share” legislation has taken a unique path in each of the following jurisdictions, the impetus has common roots. Spurred by a sense that people of color and people with low incomes were systemically excluded from affordable housing opportunities and that, left to its own devices, the private market would continue to foster segregated communities, the civil rights and affordable housing advocacy communities coalesced behind reform efforts. Grassroots organizing in Massachusetts got the ball rolling, while litigation by the NAACP in New Jersey was the catalyst for action by the state legislature. In California and Montgomery County, there was also strong support from the professional planning community, which saw that the lack of affordable housing was both an economic development and a social justice issue.

Statewide legislation in Massachusetts, formally known as Chapter 40B after its placement in the state code, but colloquially known as the “anti-snob” zoning law,



has been credited with producing 25,000 affordable housing units since its passage in 1969. The law was aimed at increasing the supply of low and moderate income housing, as well as distributing that housing evenly, by allowing the suspension of local regulations that made it difficult or impossible for such units to be built. The statute sets a goal that each city and town should have at least 10 percent of its housing stock defined as affordable or subsidized housing. Through the anti-snob zoning, if an affordable housing proposal were denied in a town with less than 10 percent, the developer could appeal the decision at the state level to the Housing Appeals Committee (HAC). The HAC could override the city or town's decision, based on the fact that there is less than 10 percent affordable housing, citing a substantial housing need, which outweighs local concerns.

Once a town or city had its 10 percent affordable housing, rejections of additional developments could not be appealed. In theory, the percentage of residents living in subsidized housing would be about the same throughout the state. In practice, anti-snob zoning hasn't quite worked out like that. According to the most recent figures available from the Massachusetts Department of Housing and Community Development and the Citizens Housing and Planning Association, a nonprofit umbrella group for affordable housing and community issues, only 23 of the state's 351 cities and towns meet the 10 percent affordable housing goal. And almost none of the 23 are wealthier suburban areas that were the target of anti-snob zoning in the first place.

New Jersey's Mount Laurel doctrine, named after the municipality involved in the court challenge in 1975 and later codified in the state's Fair Housing Act of 1985, requires all New Jersey municipalities to zone for their "fair share" of affordable housing. In the most densely populated state in the nation, the mandate was initially seen as a way to stem the tide of increasing racial and economic segregation.⁵ Through nearly 30 years of living under the state policy, thousands of units have been built for people who could not afford market rate housing. Much of that housing has been built because of the "builder's remedy," which provides that developers can bypass significant zoning and land use approvals in cities and towns that do not have their fair share of affordable housing. Still, the Mount Laurel doctrine has not met with universal approval. Local government officials have worked for years to relax the mandate, and the conflict recently resulted in the departure of a senior administrator.⁶ At the same time,

civil rights activists, unhappy with the doctrine for different reasons, are "working to return it to its radical roots."⁷

According to the California Housing Law Project, every city and county in California must adopt a comprehensive "general plan" to govern its land use and planning decisions. All planning and development actions must be consistent with the general plan. The general plan must contain seven elements, including a housing element. The housing element must "make adequate provision for the housing needs of all economic segments of the community." And while this law does not require local governments to provide housing to meet the need, it does require that the community plan for the needs of all their residents. Each community must prepare a new housing element every five years and submit the element for review by the public and the state Department of Housing and Community Development.

Advocates object that state law does not sufficiently encourage the development of truly affordable housing, but the California Coalition for Rural Housing (CCRH) and Non-Profit Housing Association of Northern California (NPH) have released a recent report indicating that 107 cities and counties in California have adopted local inclusionary housing ordinances, a development which the organizations say has the potential to double affordable housing production statewide. The July 2003 report, *Inclusionary Housing in California: 30 Years of Innovation*, finds that 62 percent of the 107 cities and counties have recently adopted inclusionary housing programs, which are sets of policies that seek to ensure a portion of new residential developments are reserved for lower income households.

The Montgomery County Moderately Priced Dwelling Unit (MPDU) ordinance was adopted in 1973 and has produced 10,000 MPDUs in 20 years, making it one of the largest inclusionary zoning programs in the nation and arguably the most successful. According to Tustian, "developers get a 20 percent density bonus, which we believe is adequate legal protection to offset any argument that this zoning is a 'taking' of private property without compensation. It not only helps satisfy the problem of quantity of affordable housing, it also helps the social and economic integration of the community—a secondary social justice goal...[A]n important extra feature specially permits the right of purchase of up to one-third of the affordable housing units (15 percent of the total) by the Housing Authority."⁸



But beyond creating environments that are broadly conducive to affordable housing, several state and local government agencies have inserted themselves directly into NIMBY battles, and have done so on the side of affordable housing and community-based services.

- In April 2000, the Austin City Council adopted an entirely new approach to zoning and land use approval for low and moderate income housing that meets city criteria for being Safe, Mixed-Income, Accessible, Reasonably priced and Transit-oriented (“S.M.A.R.T.”). Under the S.M.A.R.T. Housing Policy Initiative, adopted by the City Council in April 2000, Austin has raised its production of new affordable housing from 200 units per year to 1,400 units in 2002, and anticipates 2,000 new units in 2003. Critics such as the Texas Low Income Housing Information Service, however, believe S.M.A.R.T. Housing facilitates hundreds of units which not only are not affordable to the majority of families with cost burden, but that the majority of units go for more than market rent.

- The City of Portland/Multnomah County Community Residential Siting Program (CRSP) operates through the City of Portland’s Office of Neighborhood Involvement. The CRSP is designed to be a centralized point of information and referral to deal with questions and concerns around the siting of residential social services as well as provide mediation/facilitation services for groups in conflict. Specific examples of work items include the development of community involvement guidelines, resource materials demonstrating demand for special needs housing for various sub populations, informational fact sheets about the siting process, and relationships between various government agencies and the siting process.

- In 1998, the New Jersey Department of Human Services (DHS) launched a public education program to increase public awareness about people with disabilities and the kinds of community living arrangements in which they reside. Under the program,

called “Good Neighbors, Community Living for People with Disabilities,” DHS representatives reach out to municipal officials, private organizations and New Jersey residents to provide information and to answer their questions, in hopes of achieving broader public acceptance and accommodations for people with disabilities.

- The City of Rochester and surrounding jurisdictions won a HUD “Blue Ribbon” award in 1999 for developing a Fair Housing Action Plan designed to overcome impediments to fair housing experienced by low-income people of color, families with children and people with disabilities. The significance of these efforts

is that they were accomplished through a unique intergovernmental cooperation and extensive public/private partnership; it is metropolitan in scope; there has been significant public involvement; and there is a commitment to implementation. Also noteworthy is the City of Rochester’s intent to assist in the financing of a suburban, affordable rental project for low-income families in the Village of

Scottsville. The Rochester Housing Authority has also committed project-based Section 8 assistance to this development, thus enabling the developer, Housing Opportunities, Inc., to secure needed state financing.

FOR MORE INFORMATION

Massachusetts “anti-snob” zoning law: Aaron Gornstein, Executive Director, Citizen’s Housing and Planning Association, 18 Tremont Street, Suite 401, Boston, MA 02108. Telephone/TTY: (617) 742-0820. E-mail: aarong@chapa.org

New Jersey “Mount Laurel” doctrine: Susan Bass Levin, Chairman, Council on Affordable Housing, 101 South Broad Street, P.O. Box 813, Trenton, NJ 08625. Telephone: (609) 292-3000. Website: <http://www.state.nj.us/dca/coah/>

California “Housing Element” Law: Dianne Spaulding, Executive Director, Non-Profit Housing Association of Northern California, 369 Pine Street, Suite

“We need to nurture positive relationships with elected and appointed officials and seek out new ways in which government can be transformed into a positive force for development of affordable housing and community-based services for all residents, regardless of race, age, income or disability.”



350, San Francisco, CA 94104. Telephone: (415) 989-8160. Michael Rawson, California Affordable Housing Law Project of the Public Interest Law Project, 449 15th Street, Suite 301, Oakland, CA 94612. Telephone: (510) 891-9794, ext. 145

Montgomery County “Moderately Priced Dwelling Unit” program: Eric B. Larsen, MPDU Coordinator, Montgomery County Department of Housing and Community Affairs, Phone: (240) 777-3713. E-mail: eric.larsen@co.mo.md.us. Website: <http://hca.emontgomery.org/Housing/MPDU/summary.htm>

Austin “S.M.A.R.T. Housing”: Stuart Hersh, Neighborhood Housing and Conservation Department, City of Austin. Telephone: (512) 974-3154. E-mail: stuart.hersh@ci.austin.tx.us. Karen Paup, Co-Director, Texas Low Income Housing Information Service, 508 Powell Street Austin, TX 78703-5122. Telephone: (512) 477-8910.

Portland Community Residential Siting Program: Eric King Coordinator, Referrals and Information Services, , City of Portland Office of Neighborhood Involvement, City Hall, 1221 SW Fourth Avenue, Room 110, Portland, OR 97204. Telephone: (503) 823-2030

New Jersey “Good Neighbors” Program: Margaret Sabin, Office of Public Affairs, New Jersey Department of Human Services, 240 West State Street, P.O. Box 700, Trenton, NJ 08625. Telephone: (609) 633-8652. E-Mail: mesabin@dhs.state.nj.us

Rochester Fair Housing Planning: Thomas R. Argust, Commissioner, Department of Community Development, City Hall, Room 125-B, 30 Church Street. Rochester, NY 14614. Telephone: (716) 428-6550

Endnotes

¹ Available at <http://www.nlihc.org/nimby/index.htm>.

² See www.bettercommunities.org.

³ Indeed, some affordable housing advocates in the “home” jurisdictions are the harshest critics of these policies which, they allege, inadequately serve very low-income people and tend to enrich developers who have learned how to use the system.

⁴ Richard Tustian, “Inclusionary Zoning and Affordable Housing,” in *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?* 1(2) *NEW CENTURY HOUSING* 21 (October 2000), available in full text at <http://www.inhousing.org/NHC-Report/NHC-5.htm>.

⁵ See generally, Kevin Walsh, “Mount Laurel Then and Now: Using the State Constitution to Further Affordable Housing,” in *Using Civil Rights Laws to Advance Affordable Housing, THE NIMBY REPORT*, Fall 2002, pp. 20-23, available in full text at <http://www.nlihc.org/nimby/fall2002.pdf>

⁶ Tom Hester, “Chief of Affordable Housing Panel Resigns,” *Newark (New Jersey) Star Ledger*, October 2, 2003, available at <http://www.nj.com/statehouse/ledger/index.ssf?/base/news-1/106507501115490.xml>

⁷ See Walsh, n. 5 at 23.

⁸ Tustian, *supra* n. 4.

Michael Allen is a senior staff attorney and director of housing programs at the Judge David L. Bazelon Center for Mental Health Law in Washington, D.C., where he is involved in public policy and litigation on behalf of the housing needs of people with mental disabilities. He also serves as co-director of the Building Better Communities Network (www.bettercommunities.org). He can be reached at 1101 15th Street, N.W., Suite 1212, Washington, D.C. 20005, 202-467-5730 x117, michaela@bazelon.org.

